

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JOSEPH DOWNING,  
 Plaintiff(s),

v.

OSVALDO FUMO, et al.,  
 Defendant(s).

Case No. 2:23-cv-00419-ART-NJK

**ORDER**

[Docket Nos. 5, 6]

Pending before the Court are Plaintiff's second application to proceed *in forma pauperis*, Docket No. 5, and Plaintiff's third application to proceed *in forma pauperis*, Docket No. 6. Subject to the conditions outlined below, the Court **GRANTS** the third application to proceed *in forma pauperis* (Docket No. 6). As such, the Court **DENIES** as moot the second application to proceed *in forma pauperis* (Docket No. 5).

Plaintiff must pay an initial partial filing fee of the greater of twenty percent of the average monthly deposits or twenty percent of the average monthly balance of his account for the six months immediately preceding the commencement of this action. *See* 28 U.S.C. § 1915(b)(1). Plaintiff's average monthly balance is \$10.28, and his average monthly deposit is \$55.00. Docket No. 6 at 4. Therefore, the Court finds that Plaintiff must pay an initial partial filing fee of \$11.00.

Accordingly, **IT IS ORDERED:**

1. Plaintiff's Application to Proceed *in Forma Pauperis* (Docket No. 1) without having to prepay the full filing fee is **GRANTED**. However, Plaintiff must pay an initial installment fee in the amount of \$11.00 toward the full filing fee of \$350. Plaintiff must have the designated fee sent to the Clerk's Office no later than **July 20, 2023**. Failure to do so may result

1 in dismissal of this action. Furthermore, even if this action is dismissed, the full filing fee must  
2 still be paid pursuant to 28 U.S.C. § 1915(b)(2).<sup>1</sup>

3 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
4 prepayment of any additional fees or costs or the giving of security therefor. This Order granting  
5 *in forma pauperis* status shall not extend to the issuance and/or service of subpoenas at government  
6 expense.

7 3. The Clerk's Office shall provide Plaintiff with two copies of this Order. Plaintiff  
8 is ordered to make the necessary arrangements to have one copy of this Order attached to the check  
9 in the amount of the designated fee.

10 4. The Clerk's Office shall send a copy of this Order to the attention of the inmate  
11 accounts department at High Desert State Prison, P.O. Box 650, Indian Springs, Nevada 89070.  
12 Pursuant to 28 U.S.C. § 1915(b)(2), Southern Desert Correctional Center shall forward to the Clerk  
13 of the United States District Court, District of Nevada, twenty percent of the preceding month's  
14 deposits to Plaintiff's inmate trust account (in the months that the account exceeds \$10.00) until  
15 the full \$350 filing fee has been paid for this action.

16 5. The Clerk's Office shall provide a copy of this Order to the Finance Division of the  
17 Clerk's Office.

18 IT IS SO ORDERED.

19 Dated: April 20, 2023

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22 \_\_\_\_\_  
23 Nancy J. Koppe  
24 United States Magistrate Judge  
25  
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27 <sup>1</sup> After it has received the partial filing fee as ordered herein, the Court will screen  
28 Plaintiff's complaint as required by 28 U.S.C. § 1915. Nothing in this order should be construed  
as suggesting that the Court will allow any of Plaintiff's claims to proceed past the screening phase.